

ASSEMBLY BILL

No. 455

Introduced by Assembly Member Chu

February 14, 2003

An act to add Article 10.3 (commencing with Section 25214.11) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 455, as introduced, Chu. Packaging materials: regulated metals.

(1) Existing hazardous waste control laws regulate the disposal of discarded appliances, lead acid batteries, small household batteries, recyclable latex paint, and household hazardous waste. Existing law prohibits any person from managing any hazardous waste, except as provided in the hazardous waste control laws and regulations. A violation of the hazardous waste control laws is a crime.

This bill would enact the "Toxics in Packaging Prevention Act," and would define terms. The act would prohibit, on and after January 1, 2004, a manufacturer or distributor, as defined, from offering for sale or for promotional purposes in this state any package or packaging component that includes any lead, cadmium, mercury, or hexavalent chromium in specified amounts, if that regulated metal has been intentionally introduced as an element during manufacturing or distribution, as defined. The act would also prohibit, on and after January 1, 2004, a manufacturer or distributor from offering for sale or for promotional purposes in this state any product in a package that includes those regulated metals in those amounts. The bill would specify a schedule for the total amount of the concentration levels of

lead, cadmium, mercury, and hexavalent chromium that may be present in any package or packaging component, which would be set at 600 parts per million by weight until January 1, 2005, 250 parts per million by weight until January 1, 2006, and 100 parts per million by weight thereafter.

The bill would exempt, from those requirements, a package or a packaging component that meets specified conditions, including, among other things, if the lead, cadmium, mercury, or hexavalent chromium is added to comply with specified health or safety requirements or if there is no feasible alternative for adding those regulated metals, as determined by the Department of Toxic Substances Control pursuant to a specified procedure. The bill would also exempt, from those requirements, a package or packaging component manufactured on or before January 1, 2010, that has a controlled distribution and reuse, if the department determines that the manufacturer or distributor has submitted a plan to the department that complies with the regulations that the department would be required to adopt, and the department makes a finding regarding the environmental benefit of the controlled distribution and reuse.

The bill would require, on and after January 1, 2004, each manufacturer or supplier to furnish a certificate of compliance to the purchaser of a package or packaging component stating that the package or packaging component is in compliance with the act. The bill would require a purchaser to retain the certificate of compliance for as long as the package or packaging component is in use. The bill would require the department to provide the public with access to the information submitted by a manufacturer or supplier.

The bill would require the department to adopt regulations to implement the act in consultation with the Toxics in Packaging Clearinghouse.

The department would be required, by January 1, 2007, and at least once every 5 years thereafter, in consultation with the Toxics in Packaging Clearinghouse, to review the implementation of the act and to submit a report, based upon that review, to the Governor and the Legislature. The department would also be required to review the extension of any exemption, pursuant to a specified procedure.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.



Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.3 (commencing with Section
2 25214.11) is added to Chapter 6.5 of Division 20 of the Health and
3 Safety Code, to read:

4
5 Article 10.3. Toxics in Packaging Prevention Act

6
7 25214.11. (a) The Legislature finds and declares all of the
8 following:

9 (1) The management of solid waste can pose a wide range of
10 hazards to public health and safety and to the environment.

11 (2) Packaging comprises a significant percentage of the overall
12 solid waste stream.

13 (3) The presence of heavy metals in packaging is a part of the
14 total concern regarding the disposal of hazardous waste in the solid
15 waste stream, in light of the presence of heavy metals in emissions
16 or ash when packaging is incinerated, or in leachate when
17 packaging is disposed of in a solid waste landfill.

18 (4) Lead, mercury, cadmium, and hexavalent chromium, on the
19 basis of available scientific and medical evidence, are of particular
20 concern.

21 (5) It is desirable, as a first step in reducing the toxicity of
22 packaging waste, and reducing the hazardous materials that may
23 be disposed of in solid waste landfills, to eliminate the addition of
24 these heavy metals to packaging.

25 (6) The intent of this article is to achieve this reduction in
26 toxicity without impeding or discouraging the expanded use of
27 recycled materials in the production of packaging and its
28 components.

29 (b) This article shall be known, and may be cited as, the
30 “Toxics in Packaging Prevention Act.”



1 25214.12. For purposes of this article, the following terms
2 have the following meanings:
3 (a) “Consumer” means a person who purchases, and takes title
4 to, a package, or a product in a package, for purposes of that
5 consumer’s own use or consumption.
6 (b) “Distribution” means the practice of taking title to a
7 package or a packaging component for promotional purposes or
8 resale. A person involved solely in delivering a package or a
9 packaging component on behalf of a third party is not engaging in
10 distribution.
11 (c) “Distributor” means any person, firm, or corporation who
12 takes title to a good, produced either domestically or in a foreign
13 country, that is purchased for resale or promotional purposes.
14 “Distributor” does not include a person involved solely in
15 delivering a package or a packaging component on behalf of a third
16 party.
17 (d) (1) “Intentional introduction” means the act of
18 deliberately utilizing a regulated metal in the formation of a
19 package or packaging component where its continued presence is
20 desired in the final package or packaging component to provide a
21 specific characteristic, appearance, or quality.
22 (2) “Intentional introduction” does not include either of the
23 following:
24 (A) The use of a regulated metal as a processing agent or
25 intermediate to impart certain chemical or physical changes during
26 manufacturing, where the incidental retention of a residue of that
27 metal in the final package or packaging component is not desired
28 or deliberate, if the final package or packaging component is in
29 compliance with subdivision (c) of Section 25214.13.
30 (B) The use of recycled materials as feedstock for the
31 manufacture of new packaging materials, where some portion of
32 the recycled materials may contain amounts of a regulated metal,
33 if the new package or packaging component is in compliance with
34 subdivision (c) of Section 25214.13.
35 (e) “Incidental presence” means the presence of a regulated
36 metal as an unintended or undesired ingredient of a package or
37 packaging component.
38 (f) “Manufacturer” means any person, firm, association,
39 partnership, or corporation producing a package or packaging
40 component.



1 (g) “Manufacturing” means the physical or chemical
2 modification of a material to produce packaging or a packaging
3 component.

4 (h) “Package” means any container, produced either
5 domestically or in a foreign country, providing a means of
6 marketing, protecting, or handling a product, including a unity
7 package, an intermediate package or a shipping container, as
8 defined in the American Society of Testing and Materials (ASTM)
9 specification D 996. “Package” also includes unsealed
10 receptacles, such as carrying cases, crates, cups, pails, rigid foil
11 and other trays, wrappers and wrapping films, bags, and tubs.

12 (i) “Packaging component” means any individual assembled
13 part of a package that is produced either domestically or in a
14 foreign country, including, but not necessarily limited to, any
15 interior or exterior blocking, bracing, cushioning,
16 weatherproofing, exterior strapping, coatings, closures, inks, and
17 labels. Tin-plated steel that meets the American Society for
18 Testing and Materials (ASTM) specification A 623 shall be
19 considered as a single package component. Electrogalvanized
20 coated steel and hot dipped coated galvanized steel that meet the
21 American Society for Testing and Materials (ASTM)
22 qualifications A 525 and A 879 shall be treated in the same manner
23 as tin-plated steel.

24 (j) “Purchaser” means any person who purchases and takes
25 title to a package, a packaging component, or a product in a
26 package, from a manufacturer or supplier, but does not include a
27 consumer.

28 (k) “Regulated metal” means a material specified in
29 subdivision (c) of Section 25214.13.

30 (l) “Supplier” means any person, firm, association,
31 partnership, or corporation that sells, offers for sale, or offers for
32 promotional purposes, a package or packaging component that is
33 used by any other person, firm, association, partnership, or
34 corporation to package a product.

35 (m) “Toxics in Packaging Clearinghouse” means the Toxics in
36 Packaging Clearinghouse (TPCH) of the Council of State
37 Governments, which was formed in 1992 to promote model toxics
38 in packaging legislation in an effort to reduce the amount of heavy
39 metals in packaging and packaging components that are sold or
40 distributed throughout the United States.



1 25214.13. (a) Except as provided in subdivision (d) and in
2 Section 25214.14, on and after January 1, 2004, a manufacturer or
3 distributor shall not offer for sale or for promotional purposes in
4 this state any package or packaging component that includes any
5 lead, cadmium, mercury, or hexavalent chromium in the amount
6 specified in subdivision (c), in the package itself, or in any
7 packaging component, ink, dye, pigment, adhesive, stabilizer, or
8 any other additive, if the regulated metal has been intentionally
9 introduced as an element during manufacturing or distribution.

10 (b) Except as provided in subdivision (d) and in Section
11 25214.14, on and after January 1, 2004, a manufacturer or
12 distributor shall not offer for sale or for promotional purposes in
13 this state any product in a package that includes any lead,
14 cadmium, mercury, or hexavalent chromium in the amount
15 specified in subdivision (c), in the package itself, or in any
16 packaging component, ink, dye, pigment, adhesive, stabilizer, or
17 any other additive, if the regulated metal has been intentionally
18 introduced as an element during manufacturing or distribution.

19 (c) The total amount of the concentration levels of lead,
20 cadmium, mercury, and hexavalent chromium present in any
21 package or packaging component that is subject to this section
22 shall not exceed the following:

23 (1) On and after January 1, 2004, until January 1, 2005, 600
24 parts per million by weight.

25 (2) On and after January 1, 2005, until January 1, 2006, 250
26 parts per million by weight.

27 (3) On and after January 1, 2006, 100 parts per million by
28 weight.

29 (d) Subdivisions (a) and (b) do not apply to any package or
30 packaging component that includes only an incidental presence of
31 a regulated metal.

32 25214.14. A package or a packaging component is exempt
33 from the requirements of Section 25214.13, and shall be deemed
34 in compliance with this article, if the package or packaging
35 component meets any of the following conditions:

36 (a) The package or packaging component is marked with a code
37 indicating a date of manufacture prior to January 1, 2004.

38 (b) (1) Lead, cadmium, mercury, or hexavalent chromium has
39 been added to the package or packaging component in the
40 manufacturing, forming, printing, or distribution process to



1 comply with the health or safety requirements of a federal law, as
2 determined by the department pursuant to this subdivision.

3 (2) A manufacturer of a package or packaging component may
4 request the department for an exemption pursuant to this
5 subdivision for a particular package or packaging component, and
6 the department may grant an exemption from Section 25214.13 for
7 up to two years, if the department determines the package or
8 packaging component is eligible for the exemption. The
9 department may renew an exemption granted pursuant to this
10 subdivision, upon reapplication for exemption, if the package or
11 packaging component is eligible for an exemption during the
12 period for which the exemption is requested.

13 (c) (1) The package or packaging component exceeds the
14 maximum contaminant levels set forth in subdivision (c) of
15 Section 25214.13 only because of the addition of a recycled
16 material.

17 (2) Paragraph (1) does not apply to any cadmium, lead,
18 mercury, or hexavalent chromium that has been recovered or
19 separated from other materials for use as a metal or metallic
20 compound.

21 (3) This subdivision shall apply only to a package or packaging
22 component manufactured on or before January 1, 2010.

23 (d) (1) A package or packaging component to which lead,
24 cadmium, mercury, or hexavalent chromium has been added in the
25 manufacturing, forming, printing, or distribution process, and for
26 which there is no feasible alternative for that use, as determined by
27 the department pursuant to this subdivision.

28 (2) A manufacturer of a package or packaging component may
29 request the department for an exemption pursuant to this
30 subdivision for a particular package or packaging component, and
31 the department may grant an exemption from Section 25214.13 for
32 up to two years, if the department determines the package or
33 packaging component is eligible for the exemption. The
34 department may renew an exemption granted pursuant to this
35 subdivision, upon reapplication for exemption, if the department
36 determines the package or packaging component is eligible for an
37 exemption during the period for which the exemption is requested.

38 (3) For purposes of this subdivision, “a use for which there is
39 no feasible alternative” is one for which the department
40 determines that the regulated substance is essential to the



1 protection, safe handling, or function of the package's contents
2 and that technical constraints preclude the substitution of other
3 materials. However, the department shall not exempt the use of any
4 regulated metal pursuant to this subdivision for the purposes of
5 marketing.

6 (e) (1) A package or packaging component that is reused but
7 exceeds the contaminant levels set forth in subdivision (c) of
8 Section 25214.13, if all of the following apply:

9 (A) The product being conveyed by the package or the package
10 or packaging component is otherwise regulated under a federal or
11 state health or safety requirement.

12 (B) The transportation of the packaged product is regulated
13 under federal or state transportation requirements.

14 (C) The disposal of the package is otherwise performed
15 according to the requirements of this chapter or Chapter 8
16 (commencing with Section 114960) of Part 9 of Division 104.

17 (2) This subdivision shall apply only to a package or packaging
18 component manufactured on or before January 1, 2010.

19 (f) (1) A package or packaging component that has a
20 controlled distribution and reuse that exceeds the contaminant
21 levels set forth in subdivision (c) of Section 25214.13, as
22 determined by the department pursuant to this subdivision.

23 (2) A manufacturer or distributor of a package or packaging
24 component may request the department for an exemption pursuant
25 to this subdivision for a particular package or packaging
26 component. The department may grant an exemption from Section
27 25214.13 pursuant to this subdivision for up to two years, if the
28 manufacturer or distributor submits a plan to the department that
29 the department determines complies with the regulations adopted
30 by the department pursuant to paragraph (3) and the department
31 determines that the environmental benefit of the controlled
32 distribution and reuse is significantly greater, as compared to the
33 same package manufactured in compliance with the maximum
34 contaminant levels set forth in subdivision (c) of Section
35 25214.13.

36 (3) The department shall adopt regulations pursuant to Section
37 25214.17 specifying the elements of the plan that a manufacturer
38 or distributor shall submit to the department, before the
39 department may grant an exemption pursuant to this subdivision.



1 The regulations shall require the plan to include all of the
2 following:

3 (A) A means of identifying, in a permanent and visible manner,
4 any reusable package or packaging component, containing a
5 regulated metal for which the exemption is sought.

6 (B) A method of regulatory and financial accountability, so that
7 a specified percentage of the reusable packages or packaging
8 components, manufactured and distributed to other persons are not
9 discarded by those persons after use, but are returned to the
10 manufacturer or designee.

11 (C) A system of inventory and record maintenance to account
12 for reusable packages or packaging components, placed in, and
13 removed from, service.

14 (D) A means of transforming returned packages or packaging
15 components, that are no longer reusable into recycled materials for
16 manufacturing or into manufacturing wastes, that are subject to
17 existing federal or state laws or regulations governing those
18 manufacturing wastes, to ensure that these wastes do not enter the
19 commercial or municipal waste stream.

20 (E) A system of annually reporting to the department any
21 changes to the system and changes in designees.

22 (4) This subdivision shall apply only to a package or packaging
23 component manufactured on or before January 1, 2010.

24 (g) (1) A glass or ceramic package or packaging component
25 that has a vitrified label when tested in accordance with the
26 Toxicity Characteristic Leaching Procedures of US EPA Test
27 Method and publication SW 846, 3rd edition, "Test Methods for
28 Evaluating Solid Waste," and does not exceed 1.0 ppm for
29 cadmium, 5.0 ppm for hexavalent chromium, and 5.0 ppm for
30 lead. A glass or ceramic package or packaging component
31 containing mercury is not exempted pursuant to this subdivision.

32 (2) This subdivision applies only to a glass or ceramic package
33 or packaging component manufactured on or before January 1,
34 2005.

35 25214.16. (a) On and after January 1, 2004, each
36 manufacturer or supplier shall furnish a certificate of compliance
37 to the purchaser of a package or packaging component stating that
38 the package or packaging component is in compliance with the
39 requirements of this article. However, if, pursuant to Section
40 25214.14, the package is exempt from the requirements of Section



1 25214.13, the certificate of compliance shall state the specific
2 basis upon which the exemption is claimed. The certificate of
3 compliance shall be signed by an authorized official of the
4 manufacturer or supplier. A copy of the certificate of compliance
5 shall be kept on file by the manufacturer or supplier of the package
6 or packaging component. A manufacturer or supplier shall furnish
7 a certificate of compliance, or a copy thereof, to the department,
8 upon its request, and to a member of the public in accordance with
9 subdivision (d).

10 (b) A purchaser of a package or packaging component subject
11 to subdivision (a) shall retain the certificate of compliance for as
12 long as the package or packaging component is in use.

13 (c) If a manufacturer or supplier of a package or packaging
14 component subject to subdivision (a) reformulates or creates a new
15 package or packaging component, the manufacturer or supplier
16 shall provide the purchaser with an amended or new certificate of
17 compliance for the reformulated or new package or packaging
18 component.

19 (d) The department shall provide the public with access to the
20 information relating to a package or packaging component
21 submitted by a manufacturer or supplier of a package or packaging
22 component.

23 25214.17. The department shall adopt regulations to
24 implement this article, including procedures for the issuance of an
25 exemption pursuant to Section 25214.14. The department shall
26 adopt these regulations in consultation with the Toxics in
27 Packaging Clearinghouse.

28 25214.18. (a) On and before January 1, 2007, and at least
29 once every five years thereafter, the department shall, in
30 consultation with the Toxics in Packaging Clearinghouse, review
31 the implementation of this article. The department shall submit a
32 report, based upon that review, to the Governor and the
33 Legislature. The report may contain recommendations to add
34 other hazardous substances contained in packaging to the list set
35 forth in subdivision (c) of Section 25214.13 in order to further
36 reduce the toxicity of packaging waste, and a description of the
37 nature of the substitutes used in lieu of lead, mercury, cadmium,
38 and hexavalent chromium.

39 (b) The department shall, in consultation with the Toxics in
40 Packaging Clearinghouse, review the extension of any exemption



1 granted pursuant to Section 25214.14. This review shall
2 commence no later than the January 1 that is two years prior to the
3 expiration of the exemption. A report based upon that review shall
4 be submitted to the Governor and the Legislature by January 1 of
5 the year prior to the expiration of the exemption.

6 25214.19. This article does not affect any duty or other
7 requirement imposed under any other federal or state law.

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

